1998 WL 52013
Only the Westlaw citation is currently available.
United States District Court, N.D. New York.

Ronald ALBRO, Michael Carpenter, Neil Epstein and Harold Warner, Individually and on behalf of all Persons Similarly Situated, Plaintiffs,
v.
The County of Onondaga, New York, Sheriff of Onondaga County, Mario M. Cuomo, Governor of the State of New York, and Thomas A. Coughlin, III, Commissioner of the Department of Correctional Services, State of New York, Defendants.

No. 85–CV–1425 (HGM). | Feb. 4, 1998.

Attorneys and Law Firms

Public Interest Law Firm, Syracuse University College of Law, Syracuse, for Plaintiffs, Janine L. Hoft, Esq., Kerri L. Cox, Student, Jonathan Jenkins, Student.

Office of the Onondaga, County Attorney, John H. Mulroy Civic Center, Syracuse, for Defendants County of Onondaga, Sheriff of Onondaga County, Jon A. Gerber, Esq., Lawrence R. Williams, Esq., of Counsel.

Opinion

MEMORANDUM-DECISION AND ORDER

MUNSON, Senior J.

***1** Currently before the court is plaintiffs' motion for attorney's fees pursuant to 42 U.S.C. § 1988. Plaintiffs request a sum of $115,125.41, which is derived as follows: $27,440.00 for time expended by attorneys Hoft, Kanter and Goldenberg ("supervising counsel"), which reflects 156.8 hours of work at a rate of $175 per hour; $87,626.25 for time expended by student attorneys, which reflects 1168.35 hours of work at a rate of $75 per hour; and $59.16 as reimbursement for 986 photocopies made in connection with representing plaintiffs. Defendants County of Onondaga and Sheriff of Onondaga County ("County") contest plaintiffs' motion and argue that if the court awards fees, then the award should be considerably lower than the amount that plaintiffs have requested.

BACKGROUND

Filed in 1985, this § 1983 class action, representing inmates at the Onondaga County Public Safety Building ("PSB") and seeking declaratory and injunctive relief, alleged that overcrowded conditions at the PSB violated plaintiffs' constitutional rights. In *Albro v. Onondaga County,* 681 F.Supp. 991, 996, this court found conditions at the facility were unconstitutional and mandated that as of March 15, 1988 the population therein should not exceed 212 inmates, a figure which represented the PSB's maximum rated capacity. The court specified fines that would accrue from April 1, 1988 onward for each day the facility's population continued to exceed 212 inmates. *Id.* at 997. The court also directed the County to submit both short and long term plans to correct the constitutional violations. As a result of the court's Memorandum–Decision and Order, on April 14, 1989, the County submitted a proposal for the construction of a new jail facility: the New Justice Center ("NJC"). By Order dated August 24, 1990, plaintiffs' counsel was granted $33,053.87 in interim attorney's fees, which represented a negotiated sum owed by the County through the date of March 15, 1990. As the court noted, plaintiffs were not precluded from filing subsequent attorney's fees applications.

Plaintiffs' current application seeks attorney's fees for work undertaken from March 16, 1990 to the present, during which they argue they have been monitoring the County's compliance with the court's mandate.[1] Likewise, they argue it was their motion to enforce the fines the County had accrued that ultimately lead to the court's March 3, 1997 Order earmarking $600,000 in fines for programs designed to prevent future overcrowding at the NJC. The County acknowledges plaintiffs prevailed on the core issue of whether conditions at the PSB were unconstitutional, but counters plaintiffs already have been awarded interim attorney's fees based upon that claim. Since March 16, 1990, it argues, plaintiffs have not been the prevailing party on any issue that would warrant an award of attorney's fees. Alternatively, the County concedes that if plaintiffs should garner a further award of fees, the award should be considerably less than the amount they seek. It submits that much of the work plaintiffs seek reimbursement for was either duplicative, unrelated to this case, or not sufficiently explained or detailed.

DISCUSSION

I. How Attorney's Fees Are Determined

***2** Under 42 U.S.C. § 1988, the court, in its discretion, may allow a "prevailing party" in a § 1983 action "reasonable attorney's fees ." Ultimately the court is

responsible for determining the reasonable fee award. *See Bingham v. Zolt,* 66 F.3d 553, 565 (2d Cir.1995); *Cruz v. Local Union No.3 of Intern. Bhd. Elec. Workers,* 34 F.3d 1148, 1159 (2d Cir.1994). Courts within this Circuit use the lodestar method of determining reasonable fees. The lodestar fee is determined by multiplying the number of hours reasonably expended by the hourly rate customarily charged for similar litigation by attorneys of the same skill in the area. *United States Football League v. National Football League,* 887 F.2d 408, 413 (2d Cir.1989); *City of Detroit v, Grinnell Corp.,* 560 F.2d 1093, 1098 (2d Cir.1977).

A. "Prevailing party"

Plaintiffs clearly prevailed on their underlying cause of action: the County's practices at the PSB were declared unconstitutional, which led to the building of the NJC and an award of $33,053.87 in interim attorney's fees. Beyond these measures, the court imposed structured fines that would accrue if the County failed to remedy conditions at the PSB.[2] Before this action was dismissed by the court on March 3, 1997, the County had accrued more than $2,000,000 in fines, which plaintiffs sought to have remitted. At issue now is whether plaintiffs are the "prevailing party" for the purposes of their current attorney's fees request regarding their role in the monitoring and ultimate enforcement of those fines.

Plaintiffs contend they are entitled to attorney's fees because subsequent to the court's declaring conditions at the PSB unconstitutional, they monitored the County's plans to remedy the overcrowding. It was their effort to collect the County's accrued fines, they submit, that led this court to issue its March 3, 1997 Order directing the fines to be remitted through the implementation of programs designed to prevent future overcrowding in the NJC.[3] The County, citing *Webb v. County Board of Educ.,* 471 U.S. 234, 243, 105 S.Ct. 1923, 1928, 85 L.Ed.2d 233 (1985) and *Pennsylvania v. Delaware Valley Citizens' Council for Clean Air,* 478 U.S. 546, 561, 106 S.Ct. 3088, 3096, 92 L.Ed.2d 439 (1988), responds that because plaintiffs never actually prevailed in a motion to enforce the fine, plaintiffs "actions in filing such motions were neither useful nor necessary to secure the final results." County's Mem. of Law at 4.

The County's view is too narrow, however. The circumstances that form the basis of this motion bear examining in light of *Kersch v. Board of County Com'rs of Natrona Cty.,* 851 F.Supp. 1541 (D.Wyo.1994), in which the plaintiffs had filed a motion for attorney's fees in connection with work performed in contempt litigation. The plaintiffs in that case, like plaintiffs in this matter, were inmates who successfully maintained an action against county defendants to remedy unconstitutionally overcrowded conditions at a county jail. Subsequent to their success on the underlying cause of action, the *Kersch* plaintiffs filed two motions seeking to hold the county in contempt of court because it violated a previously issued consent decree. Although the parties were able to resolve the matters raised in the initial contempt motion, the court entertained the second motion and the county's motion to modify the consent decree. After a hearing on the matter, the court issued an order detailing the county's failure to abide by the consent decree; and following this order, the parties again resolved their differences, and the court approved an order modifying the newly negotiated modifications to the consent decree. *Id.* at 1543.

***3** At issue was whether plaintiffs were entitled to attorney's fees for the litigation related to the contempt motions—*e.g.,* whether, under the circumstances, plaintiffs were a "prevailing party." Deciding the answer in the affirmative, the district court noted that the contempt litigation was directly related to the enforcement of the original consent decree and it "helped to ensure compliance with the existing Decree." *Id.* This is a not unsimilar situation: the conditions at the PSB were declared unconstitutional; the facility was mandated to contain no more than 212 inmates and subjected to a fine for each day it was in violation of this limit; the County was ordered to implement plans to remedy the overcrowding, which it eventually did through the building of the NJC; plaintiffs' counsel, meanwhile, in concert with the special master, monitored the County's compliance with the will of the court; their combined monitoring efforts brought the issue of the County's fines to the attention of the court; and finally, the court dismissed the case, but not before ordering the County's accrued fines to be remitted according to a specific schedule. Plaintiffs' monitoring efforts played no small role in helping this matter reach its final resolution. Notwithstanding the County's objection, plaintiffs are the prevailing party for the purposes of their motion.

B. Determining the lodestar amount

Again, the algebraic formula for determining the lodestar amount is simple: it represents the product of the number of hours reasonably expended by the hourly rate customarily charged for similar litigation by attorneys of the same skill in the area. In setting these hourly rates, the court uses the prevailing rate of the relevant legal community for the types of services rendered. *Blum v. Stenson,* 465 U.S. 886, 895, 104 S.Ct. 1541, 1547, 79 L.Ed.2d 891 (1984). Accordingly, the court looks to "fees that would be charged for similar work by attorneys of like skill in the area." *Cohen v. West Haven Board of Police Commissioners,* 638 F.2d 496, 506 (2d Cir.1980). In a lengthy litigation such as this one, it is customary in this Circuit to divide an award into separate phases and to apply a current rate to a recent phase and an historic rate

to the earlier phase. *Grant v. Martinez,* 973 F.2d 96, 100 (2d Cir.1992), *cert. denied,* 506 U.S. 1053, 113 S.Ct. 978, 122 L.Ed.2d 132 (1993). The Supreme Court, however, has held it to be within a district court's discretion to calculate the lodestar using only the current rate to compensate counsel for a long delay in payment. *Missouri v. Jenkins,* 491 U.S. 274, 283–84, 109 S.Ct. 2463, 2469, 105 L.Ed.2d 229 (1989). In that plaintiffs have waited since March 1990 for attorney's fees, the court deems it fair to apply only the current rate for their counsel's services. *See, e.g ., Catlin v. Sobol,* No. 86–CV–222, 1995 WL 363730, at *2 (N.D.N.Y. Jun.7, 1995) (court applies current rate of counsel's services based on ten year delay in receiving fees).

***4** Plaintiffs have asked for $175 per hour for supervising counsel and $75 per hour for the law student attorneys, while the County asserts that those figures should be $60 per hour and $10 per hour respectively. Neither request is appropriate. Plaintiffs cite *Atlantic States Legal Foundation, Inc. v. Whiting Roll–Up Door Mfg. Corp.,* No. 90–CV–1109S, 1994 WL 236473, at *3 (W.D.N.Y. Mar.23, 1994), in which the district court enforced a reduced rate of $100 per hour—from $150 per hour—for monitoring costs of a consent decree. Given the nature of plaintiffs' work since March 1990, the court finds a reduced rate for monitoring costs is applicable here as well. Plaintiffs' supervising counsel, each of whom was affiliated as a professor of law at the Syracuse University College of Law's Office of Clinical Programs, normally would command up to $150 per hour in this district. *See, e.g., New York State Teamsters Conference Pension & Retirement Fund v. Fratto Curbing Co.,* 775 F.Supp. 129, 131 (N.D.N.Y.1995) (holding that rates between $125 and $150 per hour are reasonable); *Catlin,* 1995 WL 363730 at *2 (holding that rates between $125 and $150 per hour are reasonable); *Kahre–Richardes Found. v. Baldwinsville,* 953 F.Supp. 39, 42 (N.D.N.Y.1997) (noting that $150 per hour is reasonable rate for partner in this district). Reducing this rate to reflect a monitoring cost rate, the court finds that $110 is an appropriate hourly fee. Similarly, the court finds a reduced rate of $30 per hour to be reasonable for the law student attorneys. *See, e.g., Sullivan v. Syracuse Housing Authority,* No. 89–CV–1205, 1993 WL 147457, at *5 (N.D.N.Y. May 3, 1993) (McAvoy, C.J.) (holding reasonable law student hourly rate to be $30 to $40 per hour).

The County disputes the hours plaintiffs claim as reasonably expended. Plaintiffs' counsel seeks compensation for 1325.15 total hours of work: 1168.35 law student hours and 156.80 supervising counsel's hours. Although these hours represent a reduction from counsel's original claim of 1648.45 law student hours and 233.90 supervising counsel's hours, the court still finds the request to be excessive. At the outset, the court notes plaintiffs claim attorney's fees for three supervising and twenty-one law student attorneys. Each of these individuals has itemized the hours he or she thinks is compensable. By the court's count, there are more than 1000 entries to consider, many of which are contested. Although responsible for determining the fee, the court should not "become enmeshed in a meticulous analysis of every detailed facet of the professional representation." *Seigal v. Merrick,* 619 F.2d 160, 164 n. 8 (2d Cir.1980) (citation omitted). As the Supreme Court has admonished, a motion for attorney's fees "should not result in a second major litigation." *Hensley v. Eckerhart,* 461 U.S. 424, 437, 103 S.Ct. 1933, 1941, 76 L.Ed.2d 40, 76 L.Ed.2d (1983). Accordingly, rather than address each entry individually, the court has derived the following chart:

Supervising Attorney	Hours Requested	Hours Awarded
Arlene Kanter	29.70	28.00
Elizabeth Goldenberg	32.00	23.20
Janine Hoft	95.10	82.45

Total:	156.80	133.65

Law Student Attorney	Hours Requested	Hours Awarded
Gregory Curtis	44.10	33.50
Jeffrey Krauss	61.40	42.60
Paul Burns	206.10	168.35
David Wilk	24.00	18.80
Sylvia Kerszenbaum	5.25	0.00
Rajiv Raval	38.20	24.00
Lauren Austin	23.00	9.00
Jeane Clark	32.50	21.00
Carolyn Edwards	96.85	77.55
Jonathan Schneeweiss	13.90	6.90
Todd Engel	2.20	2.20
Elsa Lopez	44.60	30.50

Corey Marks	33.55	18.35
Linda Oh	65.10	46.95
Susan Sakio	129.00	95.90
Jeremy Markman	87.95	80.05
Vance Hall	43.45	30.45
Paul Rhee	44.95	35.70
Paul Coughlin	8.40	7.40
Kerri Cox	50.10	35.60
Jonathan Jenkins	113.75	81.65
Total:	1168.35	866.45

***5** Accordingly, the lodestar equation is: ($110 x 133.65) + ($30 x 866.45), which equals $40,695.00. There is a strong presumption that the lodestar represents the reasonable fee and the court finds no reason to adjust the lodestar. *See City of Burlington v. Dague,* 505 U.S. 557, 561, 112 S.Ct. 2638, 2641, 120 L.Ed.2d 449 (1992). Thus, plaintiffs are awarded attorney's fees equaling $40,695.00. In addition to this sum, plaintiffs request $59.16 in photocopying costs. The County has not objected to this figure and the court deems the request reasonable.

CONCLUSION

The court finds plaintiffs are entitled to attorney's fees pursuant to 42 U.S.C. § 1988, wherefore plaintiffs' motion for fees is GRANTED. Plaintiffs' counsel are awarded $40,695.00 in attorney's fees and $59.16 in costs, making the total award to be $40,754.16.

IT IS SO ORDERED.

Footnotes

[1] Plaintiffs have not contended that the State defendants ("State") should be responsible for any fees, so it appears they seek their fees from the County and not the State. Indeed, neither plaintiffs' nor the County's certificates of service for their instant pleadings indicate that the State has been served.

[2] The court set the following fine schedule. Starting from April 1, 1988, fines were calculated as follows:

Prison Population	Per Day Fine
213–217	$ 1,000
218–222	2,000
223–227	3,000
228–232	4,000
233–237	5,000
238–242	6,000
243–247	7,000
248+	10,000

The County submitted daily tally sheets for the preceding week indicating the number of prisoners at the PSB to special master Donald Stoughton and to plaintiffs at the end of each week. Stoughton was responsible for maintaining a current record of the fines that accrued.

[3] By order of the court, the County is to implement the following programs pursuant to the court mandated schedule in order to remit the fines it owed:

Year	Vera House	Bail Expeditor	Total
1998	$27,000.00	$88,000.00	$115,000.00
1999	$29,000.00	$92,000.00	$121,000.00
2000	$31,000.00	$96,000.00	$127,000.00
2001	$33,000.00	$100,000.00	$133,000.00
2002	$ 0.00	$104,000.00	$104,000.00
TOTAL	$120,000.00	$480,000.00.	$600,000.00

The Vera House funds are to be used for two programs: the Adolescent Batterers Intervention Program and the Jail Visitor Program at the NJC.